IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-11-2006

CORAM :

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
and
THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 12744 of 2006

Justice P. Venugopal .. Petitioner

Versus

State of Tamilnadu
rep. by the Chief Secretary
Fort St. George
Chennai - 600 009 .. Respondent

Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the respondent in Letter No.3081/Special B/2003-7 dated 29.06.2005 and quash the order dated 29.06.2005.

For Petitioner : Mr. M.N. Padmanabhan, Sr. Counsel
for Mr. M. Noor Ahmed Khan

For Respondents : Mr. P.S. Raman
Additional Advocate General
asst. by Mr. P. Subramanian
Addl. Government Pleader

ORDER

A. KULASEKARAN, J

Questioning the validity of the Order dated 29.06.2005 passed by the respondent rejecting the claim of the petitioner for re-fixation of pension, the present writ petition has been filed.

2. The case of the petitioner is as follows:-

The Petitioner was appointed as Permanent Judge, High Court of Madras on 25.01.1979 and superannuated on 07.12.1981. During the said period, the Government of India has issued a notification dated 29.07.1981 appointing the petitioner as Commission of inquiry to inquire into the incidents relating to the attack on the offices and premises of Tamil Newspapers 'Malaimurasu' and 'Dinakaran". The notification dated 29.07.1981 reads thus:-

"I am directed to say that the President requests Shri Justice P. Venugopal, Judge, Madras High Court to function as the Commission of Inquiry under the

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Commissions of Inquiry Act, 1952 in respect of the incidents that took place in Coimbatore Town in Tamil Nadu on 23rd July, 1981.

2. The time spent by Shri. Justice P. Venugopal in the performance of the said function will count as Actual Service" within the meaning of paragraph 11 (b) (i) of Part "D" of the Second Schedule to the Constitution of India read with Section 2 (1) (c) (i) of the High Court Judges (Conditions of Service) Act, 1954. Shri Justice Venugopal will not be entitled to any extra remuneration for the above work except travelling allowances and daily allowances as admissible under the High Court Judges (Travelling Allowance) Rule, 1956."

3. Following the said notification, Government of Tamil Nadu i.e., the respondent herein issued G.O. Ms. No. 1504, Public (Law and Order-4) Department dated 28.12.1981.

4. Before completion of the said enquiry, the petitioner attained the age of superannuation, hence, the Government of Tamil Nadu issued G.O. Ms. No.2306 (Law & Order-4) Department dated 28.12.1981 stating thus:-

"In the G.O. read above, Justice Thiru. P. Venugopal, sitting Judge of the Madras High Court was appointed as Commission of Inquiry to enquire into the alleged incidents of attack on the offices and premises of news papers 'Dinakaran' and 'Malai Murasu' in Coimbatore Town on 23.07.1981. He has since retired on superannuation on 07.12.1981 AN and has requested that formal orders may be issued authorising him for the drawal of the pay and allowances drawn by him as Judge of the High Court beyond 07.12.1981, as he is entitled for the last pay drawn by him as the Commission of Inquiry.

2. Justice P. Venugopal (Retired) who has been appointed as the Commission of Inquiry on a full time basis will draw the total emoluments last drawn by him as a Judge of the High Court, minus the pension to which he is eligible, excluding the pension commuted, if any, for the period he functions as the Commission of Inquiry.

3. Justice P. Venugopal (retired) is also eligible to draw the Travelling Allowance for the journeys undertaken in connection with the work of the Commission at the rates admissible to him immediately prior to his retirement as Judge of Madras High Court. The Commission will have its Head Quarters at Madras and the enquiries will be held in Coimbatore District at the discretion of the Commission.

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4. This order issues with the concurrence of Finance Department vide its U.O. No.4110/FS/P/81-1 dated 23.12.1981."

5. The petitioner has submitted his report on 30.09.1987.

6. Another order dated 22.03.1983 was issued by the Government of Tamil Nadu appointing the petitioner herein as One-man Commission to inquire into the alleged clashes between Hindus and Christian in Mandaikadu, Kanyakumari District and he submitted his report on 21.09.1985. Subsequently, the Petitioner was also appointed as Commission of Payments by a notification dated 01.08.1986 under the Race Club Acquisition and Transfer of Undertakings Act, 1986 (Act 26 of 1986) for valuation of the assets of the Madras Race Club. On 31.12.1988, a report was submitted by the petitioner to the Government and he relinquished the charge as Commissioner of Payments.

7. It is further stated by the petitioner that during the period between 08.12.1981 and 31.12.1988, he was drawing the same salary and allowances as sitting judge of the High Court. Hence, claiming re-fixation of his pension including the period from 08.02.1981 to 31.12.1988 taking into consideration the terms and conditions of appointment as Commission of Inquiries and Commissioner of Payment has filed WP No. 11222 of 2001 before this Court which was dismissed. Aggrieved by the order or dismissal, the petitioner has preferred SLP (Civil) No. 15450 of 2003 before the Honourable Supreme Court, which was also dismissed on 01.09.2003 with an observation as follows:-

"We, therefore, in agreement with the judgment of the Madras High Court are of the opinion that for the purpose of computation of pension different, services of the petitioner could not have been clubbed in terms of Act 28 of 1954. The pension payable to a High Court Judge would be only for the period rendered in that capacity which would constitute charge to the consolidated fund of India and services rendered subsequent thereto in terms of the order made by a State Government would not be charged to the consolidated fund. The question as to whether such a person would be entitled to pension from the concerned State or not would depend upon the statute or the terms and conditions of appointment."

8. Pursuant to the Order dated 01.09.2003 passed by the Honourable Supreme Court, the petitioner has submitted a representation dated 02.11.2003 to the respondent, but there was delay in considering it, hence, he filed WP No. 2764 of 2004 before this Court which was disposed of on 13.04.2005 directing the respondent herein to consider the representation dated 02.11.2003 of the petitioner in a manner known to Law, take a decision thereon and communicate the same to the petitioner on or before 30.06.2005. Thereafter, the respondent has passed an order dated 29.06.2005 rejecting the claim of the petitioner stating that the services rendered by him as Commission of Inquiry on two occasion and Commissioner of Payment beyond his superannuation as High Court Judge i.e., from

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08.12.1981 to 31.12.1988 could not be complied with, hence the present writ petition.

9. The learned Senior counsel Mr. M.N. Padmanabhan appearing for the petitioner submitted that the petitioner is entitled to pension covering the period from 08.12.1981 to 31.12.1988 as per the terms and conditions of appointment of the petitioner as Commission of Inquiry on two occasion and Commissioner of Payments; that the Commission of Inquiry Act and Race Club Acquisition and Transfer of Undertakings Act, 1986 (Act 26 of 1986) do not operate as a bar for the petitioner to claim pension for the said period; that the Honourable Supreme Court though held that the period of service rendered by the petitioner as High Court Judge alone could constitute charge to the Consolidated fund of India and services rendered in terms of the order made by the State Government would not be charged to the said Consolidated Fund of India, the liability to pay pension by the State Government would depend upon the terms and conditions of the appointment and that the terms and conditions of appointment of the petitioner clearly impose a liability to pay pension to the petitioner, hence, the respondent is liable to pay pension taking into account the period from 08.12.1981 to 31.12.1988 and prayed for quashing the impugned order.

10. Per contra, the learned Additional Advocate General Mr. P.R. Raman appearing for the respondent submitted that the service of a government servant does not qualify for pension unless his duties and pay are regulated by the Government or conditions determined by the Government. The expression "service" means service under the Government and paid by the Government from the Consolidated Fund of the State or a local fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as a qualifying service by that Government. The terms of appointment of commission of inquiry as well as Commission of payments clearly stipulate that they are non-pensionable service and therefore it is not open to the petitioner to seek re-fixation of pensionary benefits and prayed for dismissal of the writ petition.

11. We have carefully considered the submissions of the counsel for both sides and perused the records. The petitioner was appointed as permanent Judge of the High Court, Madras on 25.01.1979 and superannuated on 07.12.1981. The Government of Tamil Nadu has appointed the petitioner to function as Commission of Inquiry before his superannuation, thereafter as one man commission and Commissioner of payments. The Petitioner, claiming inclusion of the period of service as Commission of Inquiry and Commissioner of Payment has filed W.P. No. 11222 of 2001 before this Court, which was dismissed. As against the same, the petitioner has filed SLP (Civil) No. 15450 of 2003 before the Honourable Supreme Court which was also dismissed on the ground that the pension payable to a High Court Judge would be only for the period rendered in that capacity which would constitute charge to the consolidated fund of India and services rendered subsequent thereto in terms of the order made by a State Government would not be charged to the consolidated fund and it left open the question as to whether the Petitioner would be entitled to pension from the concerned State or not would depend upon the statute or the terms and conditions of appointment. The petitioner has submitted a representation dated

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02.11.2003 pursuant to the said order of the Supreme Court, which was ultimately rejected by the respondent under the impugned order. Hence, the three orders mentioned above, appointing the petitioner as Commission of Inquiry on two occasion and Commissioner of Payment on one occasion have to be considered to resolve the disputes involved in this writ petition.

12. It is seen from the above said three orders that the appointment of the Petitioner as Commission of Inquiry and later as Commissioner of Payment do not provide that the services so rendered by him will count towards pension, or that any enhanced or additional pension would be paid after the completion of those assignment, hence, the terms and conditions of the said three appointment orders of the petitioner do not count as actual service rendered for the purpose of inclusion of the said periods for pension.

13. It is brought to the notice of this Court by the learned Additional Advocate General that the appointment of the petitioner as commission of inquiry beyond his superannuation as High Court Judge was treated only as re-employment, which is evident from the Order of the Government of Tamil Nadu in G.O. Ms. No. 2306 dated 28.12.1981, which was necessitated to issue since the petitioner has attained superannuation while he was continuing the first commission of inquiry, wherein it was clarified that he was re-employed, his pay was regulated and fixed as the total emoluments last drawn by him as a Judge of the High Court, minus the pension to which he is eligible, excluding the pension commuted, if any, for the period he functioned as the Commission of Inquiry. It should be remembered that in the first order dated 19.07.1981 appointing the petitioner as commission of inquiry, the performance of the petitioner was treated as actual service within the meaning of paragraph 11 (b) (i) of Part "D" of the Second Schedule to the Constitution of India read with Section 2 (1) (c) (i) of the High Court Judges (Conditions of Service) Act, 1954. Before completion of the said enquiry, the petitioner attained the age of superannuation, hence, to clarify the position, the respondent has passed the order dated 28.12.1981 stating that the petitioner is appointed as commission of inquiry on a full time basis and he is entitled to draw the total emoluments last drawn by him as a Judge of the High Court of Madras, minus the pension. It is apparent from the said order that the words 'function of the petitioner counts as 'actual service' was deleted and clarified accordingly, which was not questioned by the petitioner. Thus, the Petitioner's tenure as Commission of Inquiry on two occasion and Commissioner of Payments were treated only as re-employment, hence, the said period cannot be treated as actual service rendered by him as a Judge of the High Court for the purpose of calculating the pensionary benefits. In this context, it is relevant to look into the provisions of Rule 12 of the Tamil Nadu Pension Rules, which runs as follows:-

> "12. (1) The service of a Government servant shall not qualify for pension unless his duties and pay are regulated by the Government or under conditions determined by the Government.
>
> (2) For the purposes of sub-rule (1) the expression 'service' means service under the Government and paid by the Government from the

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Consolidated Fund of the State, or a local fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government."

14. It is evident from the above said Rule that the expression 'service' means service under the Government and paid by the Government from the Consolidated Fund of the State, or a local fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government passing specific order. As mentioned above, the petitioner was re-employed as commission of inquiry and Commissioner of Payments, which are not pensionable establishment.

15. The learned Senior counsel appearing for the petitioner relied on the decision of a Division Bench of this Court reported in (Union of India vs. The Registrar, Central Administrative Tribunal and another) 2005 (3) CTC 703. The facts involved in that case was a sitting Judge of this Court was appointed as Chairman, Railway Claims Tribunal, which post he continued to hold even after he attained the age of superannuation as High Court Judge and claimed pensionary benefits for the period he rendered his service as Chairman, Railway Claims Tribunal. The Division Bench of this Court, relied on Rule 15 of the Railway Claims Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice Chairman and Members) Rules 1989, which contemplates that notwithstanding anything contained in Rules 4 to 14 of the Rules, the conditions of service and other perquisites available to the Chairman shall be the same as admissible to a serving Judge of a High Court and held that the claim made was based on Rule 15 and not based on the High Court Judges (Salaries and Conditions of Service) Act, 1954 and dismissed the writ petition filed by the Railways against the order of Central Administrative Tribunal. Hence, the said Judgment is not applicable to the facts of the case. In this case, as concluded by us already, the orders of appointment of the Petitioner as Commission of Inquiry and Commissioner of Payments were treated as re-employment in non-pensionable establishment and the same cannot be treated as actual service of a Judge of High court for the purpose of pensionary benefits.

16. In view of the above discussion, we find that there is no infirmity in the impugned order passed by the respondent. The writ petition is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Chief Secretary
Government of Tamilnadu
Fort St. George
Chennai - 600 009

1 cc To The Government Pleader, SR.52367.
1 cc To Mr.N.Noor Ahamed, Advocate, SR.52367.

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